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In re Patent No. 7,277,446 : DECISION ON REQUEST FOR
Issued: October 2, 2007 : RECONSIDERATION OF PATENT
Application No. 09/704,898 : TERM ADJUSTMENT AND
Filed: November 2, 2000 : NOTICE OF INTENT TO ISSUE
Atty Docket No. 12144-004001 : CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed October 23, 2007. Patentee requests that the patent term adjustment for the above-identified patent be set at 821 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **821 days**.

On October 2, 2007, Application No. 09/704,898 matured into Patent No. 7,277,446. The instant request for reconsideration was timely filed on October 23, 2007, within two (2) months of the date the patent issued. See 37 CFR 1.705(d). Patentee disputes the reduction of 36 days associated with the filing of a "miscellaneous incoming letter" received in the Office on August 28, 2007. Additionally, the patentee states that patentee should have been assessed a delay of 18 days for failing to reply within three months of the January 8, 2001 mailing date of the Notice to File Missing Parts of Nonprovisional Application.

A review of the PALM calculations for this application reveals that the patent term adjustment was reduced by 36 days for the submission of the "miscellaneous incoming letter" filed on August 28, 2007. See 37 CFR 1.704(c)(10). A review of the application record confirms that a Letter of Candor and Good Faith and a Response to the Notice of Allowance and Comments on the Examiner's Reasons for Allowance ("Response to the Notice of Allowance") were filed on August 28, 2007, after the mailing of the notice of allowance. However, the Office incorrectly entered the Response to the Notice of Allowance as filed on August 23, 2007, not August 28, 2007. Therefore, the Office assessed patentee a delay of 36 days for the filing of the Letter of Candor and Good Faith on August 28, 2007. A Letter of Candor and Good Faith is not a paper for which its filing is considered a "failure to engage in reasonable efforts" within the meaning of 37 CFR 1.704(c)(10). Thus, it is concluded that the reduction of 36 days is not warranted.

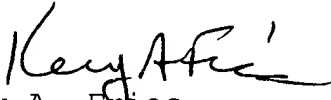
Further, a review of the application history confirms that patentee should be assessed a delay of 18 days pursuant to 37 CFR 1.704(b). A Notice to File Missing Parts of Nonprovisional Application was mailed on January 8, 2001. On April 26, 2001, patentee filed a reply, accompanied by a request for an extension of time for response within the second month. Thus, patentee failed to engage in reasonable efforts to conclude processing of this application. The period of adjustment should have been reduced by 18 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the Notice to File Missing Parts of Nonprovisional Application, April 9, 2001, and ending on the date the reply was filed, April 26, 2001. See 37 CFR 1.704(b).

In view thereof, the patent term adjustment indicated in the patent should be **821 days**.

The \$200.00 fee set forth in 37 CFR 1.18(e) is unnecessary and will be refunded to the Deposit Account.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **821 days**.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,277,446 B1

DATED : Oct. 2, 2007

INVENTOR(S) : Abi-Nassif et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (803) days

Delete the phrase "by 803 days" and insert – by 821 days--